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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **OAKLAND DIVISION**

12 THE CENTER FOR INVESTIGATIVE  
13 REPORTING and WILL CARLESS,

14 Plaintiffs,

15 v.

16 UNITED STATES DEPARTMENT OF  
17 COMMERCE,

18 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF**

19 **INTRODUCTION**

20 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,  
21 for injunctive and other appropriate relief regarding FOIA requests submitted by The Center for  
22 Investigative Reporting (“CIR”) and Will Carless (collectively “Plaintiffs”) for the processing and  
23 release of agency records requested from Defendant, the United States Department of Commerce  
24 (“DOC”), involving the 2020 United States Census (“2020 Census”).

25 2. On November 4, 2019, Plaintiffs submitted the first of three FOIA requests (“the First  
26 Request”) to the DOC’s United States Census Bureau (“Census Bureau”) for records submitted to  
27 the Census Bureau regarding concerns about the 2020 Census.  
28



13. Assignment to the Oakland Division is proper pursuant to Local Rules 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in Alameda County, where Plaintiff CIR's principal place of business is located and most actions in this case occurred.

#### **PARTIES**

14. Plaintiff CIR publishes *Reveal*, an online news site, at [revealnews.org](http://revealnews.org), and *Reveal*, a weekly public radio show with approximately 3 million listeners per week. Founded in 1977 as the first non-profit investigative news organization, CIR has received multiple awards for its reporting. CIR is a non-profit established under the laws of the State of California, with its primary office in Emeryville, California.

15. Plaintiff Will Carless is a staff reporter for *Reveal* and an employee of CIR. Defendant DOC is a department of the executive branch of the United States government and an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The Census Bureau, Office of the Secretary ("OS") and Immediate Office of the Secretary ("IOS") are components of DOC. DOC has its headquarters in Washington, D.C..

#### **FACTUAL BACKGROUND**

16. The Census Bureau is the component of DOC responsible for administering the United States Census, as required by the U.S. Constitution. Census Bureau, *Census at a Glance*, <https://www.census.gov/about/what/census-at-a-glance.html>; *see also* U.S. CONST. art. I, §2. The Census Bureau's stated mission is to "serve as the nation's leading provider of quality data about its people and economy." Census Bureau, *Census at a Glance*, <https://www.census.gov/about/what/census-at-a-glance.html>.

17. As part of its mandate, the Census Bureau conducts a "population and housing count" every ten years, which is used to determine the number of seats for each state in the House of Representatives, draw legislative districts, and allot federal funds. *Id.* The census aims to tabulate

1 the total population in all states and U.S. territories. *Id.*

2 18. The 24th national census is scheduled to take place in 2020. Census Bureau, *What Is*  
3 *the 2020 Census?*, <https://2020census.gov/en/what-is-2020-census.html>.

4 19. In March 2018, Secretary of Commerce Wilbur Ross announced that he had decided  
5 to add a question to the 2020 Census which would ask if the respondent was a citizen of the United  
6 States. Adam Liptak, *Supreme Court Green-Lights Gerrymandering and Blocks Census Citizenship*  
7 *Question*, N.Y. TIMES, June 27, 2019, [https://www.nytimes.com/2019/06/27/us/politics/supreme-](https://www.nytimes.com/2019/06/27/us/politics/supreme-court-gerrymandering-census.html)  
8 [court-gerrymandering-census.html](https://www.nytimes.com/2019/06/27/us/politics/supreme-court-gerrymandering-census.html).

9  
10 20. The proposed citizenship question is the subject of substantial public controversy,  
11 especially after the Supreme Court in June 2019 “rejected the Trump administration’s stated reason  
12 for adding a citizenship question to the census,” finding that Ross’s justification was inconsistent  
13 with the record. *Id.* Rejecting the administration’s claim that it sought to include the citizenship  
14 question to enforce the Voting Rights Act, the Court explained that the claim appeared contrived, if  
15 not pretextual, and remanded the case to the district court. *Id.*; *See Department of Commerce v. New*  
16 *York*, No. 18–966, 588 U.S. \_\_\_\_ (2019).

17  
18 21. In July 2019, unable to meet deadlines in the district court, the Trump administration  
19 announced that it would use “federal databases to gain a full, complete, and accurate count of the  
20 non-citizen population,” issuing an executive order requiring federal agencies to assist the Census  
21 Bureau in compiling these records. Will Carless, *The Census Bureau Is Building Trump a Huge List*  
22 *of Noncitizens. Will it Be Secure?*, REVEAL, Feb. 1, 2010, [https://revealnews.org/article/the-census-](https://revealnews.org/article/the-census-bureau-is-building-trump-a-huge-list-of-noncitizens-will-it-be-secure/)  
23 [bureau-is-building-trump-a-huge-list-of-noncitizens-will-it-be-secure/](https://revealnews.org/article/the-census-bureau-is-building-trump-a-huge-list-of-noncitizens-will-it-be-secure/); *see also* Exec. Order No.  
24 13880, *available at* [https://www.whitehouse.gov/presidential-actions/executive-order-collecting-](https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/)  
25 [information-citizenship-status-connection-decennial-census/](https://www.whitehouse.gov/presidential-actions/executive-order-collecting-information-citizenship-status-connection-decennial-census/).

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27  
28 22. Mr. Carless, on behalf of CIR, has reported extensively on developments in the

1 citizenship question controversy in recent years. *See, e.g.,* Will Carless, *The Census Bureau Is*  
 2 *Building Trump a Huge List of Noncitizens. Will it Be Secure?*, REVEAL, Feb. 1, 2010,  
 3 [https://revealnews.org/article/the-census-bureau-is-building-trump-a-huge-list-of-noncitizens-will-](https://revealnews.org/article/the-census-bureau-is-building-trump-a-huge-list-of-noncitizens-will-it-be-secure/)  
 4 [it-be-secure/](https://revealnews.org/article/the-census-bureau-is-building-trump-a-huge-list-of-noncitizens-will-it-be-secure/) is of great public interest; Aaron Sankin & Will Carless, *The Hate Report: White*  
 5 *Nationalists Welcome New Census Question*, REVEAL, Mar. 30, 2018,  
 6 [https://www.revealnews.org/blog/the-hate-report-white-nationalists-welcome-new-census-](https://www.revealnews.org/blog/the-hate-report-white-nationalists-welcome-new-census-question/)  
 7 [question/](https://www.revealnews.org/blog/the-hate-report-white-nationalists-welcome-new-census-question/). Based on the wide scope of news coverage of these events by CIR and other publications,  
 8 this is a matter of immense public interest.  
 9

## 10 **PROCEDURAL BACKGROUND**

### 11 **First Request**

12 23. On November 4, 2019, Mr. Carless submitted a FOIA request to DOC on behalf of  
 13 CIR seeking Plans of Actions and Milestones for the 2020 census. A true and correct copy of the  
 14 First Request is attached as Exhibit A.  
 15

16 24. Specifically, Mr. Carless requested “Plans of Actions and Milestones (POA&Ms) for  
 17 . . . issues identified during security assessment activities” regarding the 2020 census that were  
 18 classified as “high risk” or “very high-risk.” Exhibit A. Mr. Carless further clarified that the  
 19 POA&Ms sought were discussed in “[p]age 22” of “U.S. GAO Report 19-431T.” *Id.*  
 20

21 25. On November 6, 2019, Mr. Carless received an automated email acknowledging the  
 22 First Request and assigning it tracking number DOC-CEN-2020-000206. A true and correct copy  
 23 of that email is attached as Exhibit B.

24 26. On December 17, 2019, Mr. Carless received an email from DOC stating that the  
 25 agency was “working your case” and “hope[d] to have an interim response . . . as soon as possible.  
 26 A true and correct copy of that email is attached as Exhibit C.

27 27. On December 18, 2019, Mr. Carless received a letter response from DOC referencing  
 28

1 the First Request and providing several hundred responsive pages.<sup>1</sup> This response added that DOC  
2 would “continue to provide records . . . on a rolling basis.” A true and correct copy of this letter and  
3 a sample of the responsive pages are attached as Exhibit D.

4 28. On January 30, 2020, Mr. Carless sent an email requesting an update on the status of  
5 both the First Request and the Second Request, noting that while he received a partial response to  
6 the First Request in December 2019, the partial response “did not include most of the documents that  
7 were requested.” A true and correct copy of that email is included as Exhibit E.

8 29. That same day, Census Bureau’s Public Information Office wrote back to Mr. Carless  
9 that it would “look into this matter and circle back.” A true and correct copy of that email is attached  
10 as Exhibit F.

11 30. On February 27, 2020, Mr. Carless received a letter response from DOC referencing  
12 the First Request and providing 50 responsive pages which were heavily redacted. A true and correct  
13 copy of this letter and a sample of the responsive pages are attached as Exhibit G.

14 31. Neither the December 18 production nor the February 27 production included specific  
15 information on what was contained in the POA&Ms that Mr. Carless requested.

16 32. Mr. Carless has received no further correspondence from DOC regarding the First  
17 Request. More than 20 working days have passed since Plaintiffs submitted the First Request on  
18 November 4, 2019.

19 33. DOC has failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(i), which requires that  
20 an agency make determinations with respect to a request within 20 business days.

21 34. Having exhausted all administrative remedies, Plaintiffs now seek injunctive relief.

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27 <sup>1</sup> While the response letter *stated* that it was providing 873 pages, the Google Document shared  
28 with Plaintiffs was less than 200 pages long. It is unclear whether this discrepancy is due to a  
formatting issue or agency oversight.

**Second Request**

35. On November 13, 2019, Mr. Carless submitted a FOIA request to DOC on behalf of CIR seeking communications between senior DOC officials about the 2020 census. A true and correct copy of the Second Request is attached as Exhibit H.

36. Specifically, Mr. Carless requested “copies of all communications . . . containing the following terms: Citizenship question, Title 13, Administrative data, Census, Hofeller, [and] Common Cause.” Ex. H. Mr. Carless further specified that he only sought communications between certain “senior officials” at the DOC: Secretary Ross, Deputy Secretary Karen Kelley, Chief of Staff Michael Walsh, Jr., Chief Financial Officer Thomas Gilman, and National Technical Information Service Director Avi Bender. *Id.*

37. That same day, Mr. Carless received an automated email acknowledging the Second Request and assigning it tracking number DOC-OS-2020-000250. A true and correct copy of that email is attached as Exhibit I.

38. On November 14, 2019, Mr. Carless received an automated email notifying him that the tracking number for the Second Request had been changed to DOC-IO-2020-00250. A true and correct copy of that email is attached as Exhibit J.

39. On November 27, 2019, Mr. Carless received an automated email notifying him that his request for expedited processing had been granted. A true and correct copy of that email is included as Exhibit K.

40. On January 30, 2020, Mr. Carless sent an email requesting an update on the status of both the First Request and the Second Request, noting that he had heard nothing regarding the Second Request since being granted expedited processing more than two months earlier. Ex. E.

41. That same day, Census Bureau’s Public Information Office wrote back to Mr. Carless that it would “look into this matter and circle back.” Ex. F.

1           42. Mr. Carless has received no further correspondence from DOC regarding the Second  
2 Request. More than 20 working days have passed since Plaintiffs submitted the Second Request on  
3 November 13, 2019.

4           43. DOC has failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(i), which requires that  
5 an agency make determinations with respect to a request within 20 business days.

6           44. Having exhausted all administrative remedies, Plaintiffs now seek injunctive relief.  
7

8                           **Third Request**

9           45. On February 7, 2020, Mr. Carless submitted a FOIA request to DOC on behalf of CIR  
10 seeking copies of communications “regarding inaccurate, suspicious or fraudulent activity” about  
11 the 2020 census. A true and correct copy of the Third Request is attached as Exhibit L.

12           46. Specifically, Mr. Carless requested “all emails received by or sent from the email  
13 address rumors@census.gov,” “all messages received or sent by the Census Bureau’s social media  
14 accounts . . . between Jan. 1, 2019 and Feb. 7, 2020,” “[t]ranscripts of any reports to the Census  
15 Bureau’s CustomerService Hotline . . . regarding inaccurate, suspicious, or fraudulent activity  
16 between Jan. 1, 2019 and Feb. 7, 2020,” and “all reports or memos produced since Jan. 1, 2015 by  
17 any members of the Census Bureau’s Trust and Safety Team.” Ex. L.

18           47. Mr. Carless has received no correspondence from DOC regarding the Third Request.  
19 More than 20 working days have passed since Plaintiffs submitted the Third Request on February 7,  
20 2020.  
21

22           48. DOC has failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(i), which requires that  
23 an agency make determinations with respect to a request within 20 business days.

24           49. Having exhausted all administrative remedies, Plaintiffs now seek injunctive relief.  
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**CAUSE OF ACTION**

**Violation of Freedom of Information Act**

50. Plaintiffs repeat and reallege paragraphs 1-50.

51. DOC is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

52. DOC has no lawful basis for declining to acknowledge the existence of the records requested by Plaintiffs under FOIA.

53. DOC has improperly delayed the Requests, which warranted expedited processing.

54. DOC has failed to issue final determinations as to Plaintiffs' three requests within the 20 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i) and (ii). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

55. Plaintiffs are entitled to declaratory and injunctive relief compelling the expedited release and disclosure of the requested records.

**REQUESTED RELIEF**

WHEREFORE, Plaintiffs prays that this Court:

1. Declare that Defendant DOC violated FOIA by failing to provide requested records in response to Plaintiffs' Requests and failing to notify Plaintiffs of a final determination as to the Requests within the statutory time limit;

2. Declare that the documents sought by their Requests, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

3. Order Defendant DOC to expeditiously provide the requested documents to Plaintiffs within 20 business days of the Court's order;

4. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as

1 expressly permitted by FOIA; and

2 5. Grant Plaintiffs such other and further relief as this Court may deem just and proper.

3  
4 DATED: March 12, 2020

Respectfully submitted,

5 By: s/ D. Victoria Baranetsky

6 D. Victoria Baranetsky (SBN 311892)

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